

ASSET CONFISCATION UPDATE – 22 February 2011

by Christian Juebner
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DPP v Dickfoss [2011] NTSC 04

On 14 January 2011, the NT Supreme Court (Mildren J) handed down a decision which provides a useful discussion of the definition of “*crime used property*” (under the *Criminal Property Forfeiture Act*) which is similar in many respect to the definition of “*tainted property*” (under the *Confiscation Act*).

Relevantly, the key issue for determination was whether the growing of cannabis plants in outdoor pots resulted in the land on which the pots were placed being used directly or indirectly in or in connection with the commission of the relevant forfeiture offence.

The Court determined that the land on which the pots were placed was not used directly or indirectly in or in connection with the relevant forfeiture offence.

The decision turned very much on the facts of the case. His Honour stated at [67]:

Mr Wyvill SC submitted that the plants were not grown on the land but in pots which are removable chattels, not in any way fixtures. I agree. He submitted that the land was not used indirectly to grow the cannabis. The evidence does not support a conclusion that water supplied to the land was used to water the largest plant, and the other plants relied only on the rain. I accept that submission. The plants were in the open. There was no shed, such as in George’s case, used to hide, protect or assist directly or indirectly in growing the cannabis. He is correct. There were only four or five pots employed which occupied only a miniscule proportion of the total surface of a large property. This is also correct.

In most confiscation cases, cannabis is grown indoors using hydroponic cultivation equipment.

Commonly, there is a power bypass. In such cases, there is no doubt that the relevant property will be “tainted property” under the *Confiscation Act*.

About the author

Christian Juebner is a barrister at the Victorian Bar. Christian practices in commercial law and confiscation litigation.

Before coming to the Bar, Christian was a partner with Deacons (now Norton Rose). Through his commercial experience, he has a detailed knowledge of property, equity and trust issues, all of which are relevant to and impact on proceedings under the Confiscation Act.

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